

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of)	
)	
Market Entry and Regulation of)	IB Docket No. 95-22
Foreign-affiliated Entities)	RM-8355
)	RM-8392

REPLY COMMENTS OF COMSAT MOBILE COMMUNICATIONS

John S. Hannon, Jr.
Vice President, Legal
Affairs
Neal T. Kilminster
Assistant General Counsel
22300 Comsat Drive
Clarksburg, Maryland 20871
(301) 428-4000

May 12, 1995

No. of Copies rec'd 024
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Market Entry and Regulation of)	IB Docket No. 95-22
Foreign-affiliated Entities)	RM-8355
)	RM-8392

REPLY COMMENTS OF COMSAT MOBILE COMMUNICATIONS

COMSAT Corporation, through its COMSAT Mobile Communications division ("COMSAT") and by its attorneys, hereby replies to certain comments filed in response to the *Notice of Proposed Rulemaking* in the above-captioned proceeding ("*Notice*").¹

COMSAT did not file in the initial round of comments because the Commission's proposals for evaluating entry of foreign-affiliated entities into the United States telecommunications market did not have any relevance to its international mobile satellite business. However, TRW, Inc. ("TRW"), has filed comments urging that the Commission treat foreign carrier owners of the Inmarsat-P venture ("I-CO")² as affiliates of COMSAT and therefore subject to the proposed market entry requirements. TRW takes this position despite the fact that the text of the Commission's *Notice* nowhere

¹ Notice of Proposed Rulemaking in the Matter of Market Entry and Regulation of Foreign-Affiliated Entities, IB Docket No. 95-22 (Feb. 17, 1995).

² The Inmarsat-P venture has become incorporated in the United Kingdom under the name I-CO Global Communications Limited.

mentions such entities or indicates that the Commission sees any relevance of its proposals to them.³

As shown below, application of the Notice's market access proposal to global mobile satellite system operators is neither required by the Commission's policy objectives nor consistent with the public interest. This is particularly true if the consequence of such application would be to bar entirely provision of service to the U.S. over such a system due to the lack of "effective market access" in the primary markets of one or two investors. In any event, competitive equity and the best interests of U.S. consumers require that I-CO not be subjected to any standard that is not applied to the "Big LEO" systems as well.

**THE COMMISSION SHOULD NOT APPLY
THE PROPOSED MARKET ENTRY RULES TO
GLOBAL MOBILE SATELLITE VENTURES**

TRW's proposal to apply the proposed market entry rules to global mobile satellite systems such as I-CO should be summarily rejected. Adoption of such a position would thwart the Commission's goal of promoting open markets. It is quite instructive that, although the Commission is obviously aware of the proposed Iridium, I-CO, and TRW systems,⁴ the Notice

³ See *Comments of TRW, Inc.*, at 5-8 (Apr. 11, 1995).

⁴ See, e.g., *Petition of Motorola Satellite Communications, Inc.*, for Declaratory Ruling, FCC 94-296
(continued...)

nowhere discusses them or even hints that the market entry rules proposed therein would apply to such global systems.⁵ Indeed, the Notice expressly states that the Commission "do[es] not propose to apply foreign carrier restrictions to participation in separate satellite systems and other noncommon carrier facilities."⁶ Given the agency's goals of promoting competition and opening foreign markets to U.S. companies, it would be simply illogical and counterproductive to apply the proposed rules to such global ventures.

The practical effect of applying the proposed rules to global mobile satellite ventures would be to stifle competition in international telecommunications by reducing the number of those systems that could compete. If the Commission were to require "effective market access" to the "primary market" of every participant in the system, even one nation's restrictive policies could result in the

⁴(...continued)
(Nov. 22, 1994); *Participation by COMSAT Corporation in a New Inmarsat Satellite System Designed to Provide Service to Handheld Communications Devices*, DA 95-31 (Jan. 31, 1995) ("TRW Emergency Petition").

⁵ Indeed, Motorola, which as a permittee of a global MSS system has interests similar to those of TRW, evidently recognizes that the proposed rules would not apply to a Comsat application to provide Inmarsat-P services. Instead, it takes a more restrained view in urging the Commission to consider market access issues as part of the general public interest review of any such application. See *Comments of Motorola, Inc.* at 12-13 (Apr. 11, 1995).

⁶ Notice, at ¶ 83.

Commission's denial of any applications to provide service over the international system.⁷

Such a U.S. approach would pose strong disincentives for the creation of international cooperative ventures. Experience has shown that the creation, launch, and operation of a global communications satellite system requires the commitment of enormous capital from around the world. Applying the proposed rules to such systems, however, would materially reduce the incentives for other nations to participate in international cooperative ventures. It would also unduly penalize U.S. users, by limiting their service options and denying them the benefits of competitive pricing. While the exclusion of global systems such as I-CO or Iridium from U.S. markets might serve the private interest of competitors, it would not promote the public interest in competition in the global market for communications services.

Moreover, the Commission could expect some nations to undertake retaliatory actions if the proposed rules were extended to international cooperative systems. Indeed, a

⁷ An "effective market access" review for a global system with numerous investors would also be enormously burdensome. If the Commission were to examine the "primary market" of each investor in an international satellite system, then it would have to examine the laws, business practices, and telecommunications infrastructure of each of many foreign investors. As Motorola states in another context, the "resulting delay [of such a review process] would be needlessly compounded by the need to examine a multitude of markets before deciding whether to make a public interest finding." *Motorola Comments* at 3.

foreign nation seeking to participate in a global satellite system would have little incentive to open its own markets if the ability of the global system to compete in the U.S. market could be frustrated by the actions of a third country, also a participant, that had less acceptable open policies. Given the large number of nations participating in planned global systems, applying reciprocal market entry policies by the United States in the manner advocated by TRW could lead other nations to retaliate by closing their markets.

COMSAT does not doubt the ability of the Commission to weigh relevant and appropriate public interest factors at such time as it reviews any application for service through a global satellite system. However, there is no public interest basis for applying the proposed rules in the *Notice* to such systems.

Nor is there any policy or legal basis for applying a regulatory double standard to the proposed global systems, as urged by TRW. The Commission has already ruled that "Big LEO" systems not offering service directly to the public will be treated as private carriers, and based that decision, in large part, on its desire to facilitate those systems' search for foreign participation.⁸ I-CO should not be subject, under the public interest standard, to any market tests to

⁸ *Mobile Satellite Service*, 9 FCC Rcd 5936, 6005 ¶¶ 180-81 (Oct. 14, 1994).

which the "Big LEO" systems are not also subject. Certainly, TRW has offered no rationale for applying a regulatory double standard to different predominantly foreign-owned global mobile satellite systems.

CONCLUSION

For the foregoing reasons, COMSAT respectfully urges the Commission to reject TRW's proposal to deem I-CO investors as "affiliates" of COMSAT for purposes of applying the market entry test.

Respectfully submitted,

COMSAT CORPORATION
COMSAT MOBILE COMMUNICATIONS

By: John S. Hannon, Jr.
John S. Hannon, Jr.
Vice President, Legal
Affairs
Neal T. Kilminster
Assistant General Counsel
22300 Comsat Drive
Clarksburg, Maryland 20871
(301) 428-4000

May 12, 1995